
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

Amerifinancial, Inc.,

Plaintiff,

versus

RMC Energy Group, LLC and
Mark Fitzgerald

Defendants.

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Civil Action H-07-1009

Amended Opinion on Summary Judgment

1. *Introduction.*

An investment broker agreed to assist investment in an oil company. The company did not pay as it agreed. It must.

2. *Background.*

Amerifinancial, Inc., agreed to assist RMC Energy Group, LLC, and its chief executive officer Mark Fitzgerald to obtain investors and lenders – Energy, for convenience. Amerifinancial seeks the commissions due under the contract with Energy. Energy's answer was struck for intransigence; it repeatedly failed to produce the documents ordered by the Court or attend conferences. Amerifinancial moved for summary judgment.

3. *Role of Amerifinancial.*

Energy says it had existing relationships with these investors. It argues that Amerifinancial should not be paid because it contributed nothing. This argument fails; the contract says that Amerifinancial is entitled to a fee if a transaction is consummated. To avoid these arguments, Amerifinancial obtained an agreement with Energy for a commission on all capital introduced during the contract period. Amerifinancial had only a general duty to assist, while Energy had a specific duty to pay Amerifinancial a percentage of all consummated

transactions. Amerifinancial is due its damages.

4. *Conclusion.*

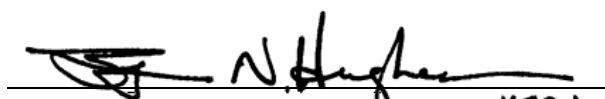
Because Energy's answer was struck, its arguments should not need to be addressed, but the Court did in an excess of process. Amerifinancial pleaded damages of fees, membership interest of Energy that shall not be diluted for five years, a percentage of the total capitalization of Energy, and pre-judgment interest on these amounts. It also sought court costs, expenses, attorneys fees, and post-judgment interest.

Although the contract between the parties called for Amerifinancial to be granted a membership interest of Energy, the Court will not force adverse parties into partnership with each other.

The court ordered the parties to furnish the value of the interest. Amerifinancial calculated it as \$326,000.00; Energy chose not to respond. Amerifinancial's calculation is reasonable, and it is included in its damages.

For its interest, Amerifinancial will be awarded damages of \$326,000.00 against RMC Energy Group, LLC; Mark Fitzgerald is jointly and severally liable for \$270,000.00. Amerifinancial will be awarded \$41,800.00 in investment fees and \$50,000.00 for its work on the M100 contracts against RMC Energy Group, LLC. Amerifinancial will be awarded \$14,514.85 in attorneys fees and \$387.00 in costs; RMC Energy Group, LLC and Mark Fitzgerald are jointly and severally liable.

Signed on May 4, 2008, at Houston, Texas.



Lynn N. Hughes
United States District Judge

USDOJ